

BEFORE THE
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re applications of

DARRELL BRYAN

SBH PROPERTIES, INC.

For a Construction Permit
for a New FM Station on
Channel 276A (107.3 MHz)
in Tusculum, Tennessee

) MM Docket No. 93-241

) File No. BPH-920109MA

) File No. BPH-920123MD

To: The Hon. John M. Frysiaak
Administrative Law Judge

**OPPOSITION TO PETITION TO ENLARGE ISSUES AND
THRESHOLD SHOWING OF UNUSUALLY POOR BROADCAST RECORD**

Respectfully submitted,

DARRELL BRYAN

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November 12, 1993

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**OPPOSITION TO PETITION TO ENLARGE ISSUES AND
THRESHOLD SHOWING OF UNUSUALLY POOR BROADCAST RECORD**

Darrell Bryan, by his attorneys, hereby opposes the Petition to Enlarge Issues and Threshold Showing of Unusually Poor Broadcast Record filed by SBH Properties, Inc. In support of this opposition, the following is shown:

I. PRELIMINARY STATEMENT

1. In its petition, SBH requests five issues which it describes as basic qualifying issues. It seeks an undisclosed principal/real-party-in-interest issue and an accompanying misrepresentation issue, an issue relating to unmodulated operation of the transmitter of WSMG (AM) after sign-off and leaving it unattended, an issue relating to operation of WSMG with excess power, and an issue relating to failure to prepare and maintain quarterly issues/programs

lists in the WSMG public file. In addition to the foregoing issues, SBH alleges that WSMG failed to present programs responsive to community problems and asserts that "based upon the foregoing" the evidence presented constitutes a threshold showing of an unusually poor broadcast record on the part of Darrell Bryan, and seeks to have his broadcast record considered under the standard comparative issues. The requested issues and the threshold showing are discussed below.

II. UNDISCLOSED PRINCIPAL/REAL PARTY-IN-INTEREST & MISREPRESENTATION ISSUES

2. SBH requests two issues, issues 4 and 5, based on the allegation by SBH nonvoting stockholder, Kent Bewley, that Kathy Knight, an employee of Bryan's AM station came to Bewley's auto dealership in February, 1992 to talk about the Tusculum FM applications and had stated to him that she and Mr. Bryan believed that it had been Mr. Bewley's idea "to file against them". He also states that Ms. Knight talked to him about the SBH application on four or five other occasions. Mr. Bewley also states that Ms. Knight's father, Frank Harkins, also came to the dealership in April 1992 and made statements which he interpreted as indicating that Mr. Harkins was involved, or was going to be involved, in Darrell Bryan's application as an investor. Based on the Bewley declaration, SBH seeks an undisclosed principal/real-party-in-interest issue and an issue on whether the true ownership of the Bryan application has been misrepresented.

3. In his declaration, Mr. Bewley alleges that Ms. Knight came to his business "apparently on a fact finding mission for Darrell Bryan" and she used words such as "us" or "them" in asking why he was involved in an application against "them". Mr. Bewley believes those words indicate that Ms. Knight is obviously involved with Bryan as a principal. The Bewley declaration also alleges that Frank Harkins came to Mr. Bewley's auto dealership and also discussed the fact that

out that she regularly uses words such as "us" when talking to prospective advertisers and is confident that no one interprets such words as an indication that she is a part owner of WSMG. She states that she has never had an interest in the Bryan application and has never had any discussions with Mr. Bryan or anyone else about becoming an investor.

5. The test for determining whether a third party is a real party-in-interest is whether that person has an ownership interest, or will be in a position to control, actually or potentially, the operation of the proposed station. *San Joaquin Television Improvement Corporation*, 2 FCC Rcd 7004, 7008 (1987) and cases cited therein. The foregoing statements of all persons relevant to the matters alleged make it clear that SBH has failed to make a prima facie showing that Kathy Knight or Frank Harkins have an ownership interest or that they will be in a position to exert any control over the operation of the proposed Bryan station. Furthermore, SBH has failed to meet the requirements of Section 1.229 of the Rules which requires that motions to enlarge issues contain sufficient concrete facts, free of surmise, to warrant further inquiry. In *Garrett, Andrews & Letizia*, 86 FCC 2d 1172 (Rev. Bd. 1981), the Review Board addressed the requirements of Section 1.229, and explained (para. 10) that "speculation and innuendo will not suffice". In *Perry Smith*, 103 FCC 2d 1079 (Rev. Bd. 1985), the Board rejected a petition for issues because (para. 6) "its affidavit underpinnings are shallow and fully controverted by truly knowledgeable affiants leaving a petition based on speculation and surmise rather than on facts".

6. The SBH allegations based on the impressions formed by Mr. Bewley from his conversations with Kathy Knight and Frank Harkins constitute gross speculation. The requested real-in-party-in-interest issue must be denied. Moreover, since the requested misrepresentation issue is dependent on the real-party-in-interest allegations, the requested misrepresentation issue must also be denied.

of a qualifying issue would not serve the deterrent purpose addressed by the Commission in its *Policy Regarding Character Qualifications in Broadcast Licensing*, 100 FCC 2d 1179 (1985). It requires the examination of the particular reasons accounting for the record to "determine whether they will be present in the proposed station", *1965 Policy Statement*, 1 FCC 2d at 398. In summary, Mr. Bryan has acknowledged that the WSMG transmitter was left on after sign-off and has provided his reasoning as to why he believed that such operation was permitted. There are no questions as to whether Station WSMG left its transmitter on, unmodulated after sign-off to be explored under a hearing issue. Addition of the requested issue is unnecessary. The unattended operation occurred because of concern about loss of service due to transmitter malfunction. Mr. Bryan believed that the action that he took was permitted during the Experimental Period. Finally, remedial measures were taken, and the unattended operation ceased in July. The requested issue should not be added.

IV. WSMG HAS NOT OPERATED IN EXCESS OF ITS AUTHORIZED POWER

10. SBH alleges that the transmitter logs for the week of June 28 through July 4, 1993, "confirm on their face that WSMG operated in excess of its authorized power of 7.29 amps (1,000 watts) for the entire broadcast week". This allegation is based on the declaration of David T. Murray in which he states that the WSMG license indicates an authorization for a base or antenna current of 7.29 amps to produce 1,000 watts. He states that Section 73.1560 provides that the antenna input power of an AM station may not be more than 105% of the authorized power or 7.65 amps. He states that he examined the transmitter logs for the week of 6/8 - 7/4/93 and found that the log entries show that the station exceeded the authorized power by more than 105% for the entire week.

11. Attached hereto as Attachment E is a declaration by Walt Stone, the local engineer for WSMG, who explains that in July 1992 the sampling cable for the remote meter which is

read at the station studio was cut by a lawn mower. Mr. Stone states that the line was spliced above ground but that the splice picked up radiation from the antennae causing erroneously high antenna current readings at the remote meter. He states that although the remote meter readings were high, measurements by the indirect method were taken weekly at the transmitter and these official readings revealed that the power was within tolerance under the formula: plate volts times plate current times power factor. Thus, readings made weekly at the transmitter based on the foregoing formula, showed that the station power was within tolerance. Mr. Stone states that the transmission line was replaced on August 16, 1993 and all remote meter readings are now correct. Also attached hereto as Attachment F is an engineering statement by Garrett G. Lysiak, a Registered Professional Engineer, who reviews the facts concerning the remote meter readings and based on power calculation using the Indirect Method concludes that "it can be stated that the station was operated in accordance with the Rules for power output".

12. The SBH allegations are based solely on the remote meter readings which appear on the transmitter logs. However, readings at the transmitter itself and Indirect Method calculations showed that the station was operating properly. There was no operation in excess of authorized power. SBH is in error when it alleges that the station exceeded authorized power during the week of 6/8 - 7/4/93. There is no basis for the addition of requested Issue no. 2.

V. THERE IS NO MERIT TO SBH'S REQUEST FOR A PUBLIC FILE ISSUE

13. SBH asserts that Mr. David Murray went to the studios of WSMG on July 8, 1993 and asked to look at the quarterly problems/programs lists in the public file. Mr. Murray states that there were no quarterly lists in the file for the periods October 1986 -December 1990, July - December 1991, and July - December 1992, and that only the lists for January - June 1991,

In addition, every November, WSMG visits every elementary school in Greene County to visit with students and teachers on the air, to give them recognition and to promote education.

16. Perhaps the best indication of the applicant's success in meeting the community's needs is found in the response from the community itself. As acknowledged by the Commission, "possibly the 'most reliable' index of a given licensee's public interest record [is] its reputation and standing in the local community". *Knoxville Broadcasting*, 103 FCC 2d at 696. Attached hereto as Attachment H are over forty letters from almost as many different organizations and individuals, including the Superintendent of Schools, and a member of the Tennessee House of Representatives, lauding WSMG for its support and broadcast of areas of concern to its broadcast community. These letters praise WSMG's broadcast devotion to diverse issues ranging from coverage of local events and fundraisers to its advancement of agriculture and education, two areas of utmost concern to this community. Although varied in their expression, these letters bear one central theme: WSMG has served an integral role in the community and has been the key to success in many of the community's endeavors. Examples are the following:

- A January 1992 letter thanking WSMG for its "help and cooperation in airing concerns of our citizens about our city, such as hazardous waste, cruising, unemployment, etc."
- An October 1993 letter from the Greenville City School Superintendent praising WSMG for its commitment to education, particularly through its "School Night" program and addressing topics such as substance abuse and teenage pregnancy.
- An October 1993 letter from a State Representative, describing WSMG as "conscientious" and supportive of the schools and agriculture community.
- An October 1993 letter from a local business expressing amazement at WSMG's coverage and its help of local clubs and organizations.

- An April 1993 letter from Greenville Light and Power System thanking WSMG for its cooperation and concern for Greene County residents as evidenced by its "extra efforts to keep information flowing" during last winter's blizzard.
- An April 1990 letter from the president of the Greenville Education Association: "WSMG's endeavor to acknowledge students is one of the most positive things to happen in our city this year".
- A September 1993 letter from an organization for the handicapped stating: "It has been extremely reassuring to know that you have been there for us", going on to say that many of their goals "could not have been achieved if it had not been for the dedication of all of the staff at WSMG".
- In an October 1991 letter listing WSMG's contributions to the community, the Assistant Superintendent lauded WSMG as a "very important part of this community...visible at every activity".

17. In sum, the SBH allegation that quarterly lists had never been prepared because they were missing from the WSMG public file is without merit. The public file issue should be denied. Further, it is obvious that the SBH assertions about the lack of public affairs programming are also totally without merit. It is clear that the attached letters demonstrate that the applicant has not only focused on issues of concern to the community, but has done so to such a degree as to earn distinguished regard within its community.

VI. SBH'S FAILURE TO MAKE A THRESHOLD SHOWING (Unusually Poor Broadcast Record)

18. SBH has failed to sustain its burden of making a threshold showing adequate to warrant including the issue of unusually poor broadcast record. Under the 1965 Policy Statement, an applicant seeking to introduce evidence on the past broadcast record of an applicant or its principals at other stations that they have owned or managed, must first demonstrate as a

threshold matter, that the broadcast record has been unusually good or unusually poor and thus could be predictive of future performance. In *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, 3 FCC Rcd 5179, 5191 (1988), the Commission noted:

Since these thresholds for past broadcast record and proposed program service are difficult to achieve, these issues do not arise frequently in hearings for new broadcast stations.

As acknowledged in Commission precedent, it is rare that additional comparative credit be awarded on the grounds of past broadcast record. *see Knoxville Broadcasting*, 103 FCC 2d at 689 (Rev. Bd. 1982). This is due to the high hurdle the threshold showing must meet. In the instant case this standard has not been met.

19. SBH bases its threshold showing solely on its allegations relating to real-party-in-interest and alleged violations of Commission rules, i.e., unmodulated, and unattended transmitter operation; operation in excess of authorized power, failure to place quarterly issues/program lists in the public inspection file, and lack of issue responsive programming.

20. As for the real-party-in-interest issue, it has been shown that the SBH allegations are not based on sufficient concrete facts and that the request for that issue is devoid of merit. As for the allegation with regard to operation with excess power, it has been shown that no such operation occurred because SBH bases its request solely on the remote meter readings. The meter was not giving accurate readings because of radiation to the spliced remote meter line, but, the station engineer, knowing that the remote meter readings were high, took readings at the transmitter which demonstrate that the transmitter was not operating at excess power at any time. As for the allegations of public file violations, it has been shown that the SBH allegations are unsubstantiated. It has been shown that SBH is in error when it speculates that no lists were

prepared because they were not available to its representative on the single visit to the station. The "missing" quarterly lists were at the station in another office. Even if the file had not been complete, that standing alone, would be insufficient to support a finding of unusually poor broadcast record. In *Arkansas Educational Television Commission*, 6 FCC Rcd 478 (1991), the Commission renewed a license despite a failure to keep any "issues/problems" lists for the entire license term, holding that non-compliance was not sufficient to hold a hearing on renewal. In the instant case, compliance with public file requirements was substantial and continuous.

21. With regard to the unmodulated, unattended, operation of the transmitter after sign-off, Mr. Bryan has explained that he used unmodulated operation in the Experimental Period as a form of preventive maintenance. This activity was carried out only in the interest of insuring the station's ability to broadcast for the benefit of the community. Furthermore, curative steps were taken.

22. Finally, the SBH assertions that WSMG does not offer significant treatment of issues of concern to the community are totally incorrect. The SBH assertion is based solely on its interpretation of the programming described on the quarterly lists that it copied at the station. As shown above, the station has presented considerable issue responsive programming. In addition, the SBH analysis of what is shown on the quarterly lists on which it relies, ignores clear examples of solid issue-oriented programming. For example, the 1/20/93 list shows a discussion on the talk show "Greene County Today" of projects and plans of the local NAACP; the 3/25/93 list shows a discussion on "Greene County Today" of a Doak Elementary School fund raising event. The lists show a discussion on 4/1/93 and 4/3/93 on "Greene County Today" with the Publicity Director of Kiwanis about its annual fund raising event and show a discussion on

"Greene County Today" with the head of the local Red Cross about the need for blood for the community blood drive. In short, the SBH allegations on issue-responsive programming are not even supported by the material on which it relies. In *Virgil Pearman*, 5 FCC Rcd 5697 (Rev. Bd. 1990), the Review Board rejected a threshold showing of an unusually good record based on programming because it failed to put the programming asserted in an objective and comparative context. *Id* at 5698. In the instant case, SBH has offered no comparative analysis illustrating how the other Greenville stations offer programming better catered to this community's concerns.

23. The only accurate allegation by SBH is that the WSMG transmitter was left on after sign-off. There are no questions as to whether the carrier was left on; it is clear that the carrier was left on in the Experimental Period. Mr. Bryan has given his reasoning as to why he thought his actions were appropriate. Further, the transmitter has been repaired. Even if a rule violation occurred, such operation is not sufficient, standing alone, to uphold a finding that SBH has made an acceptable threshold showing of unusually poor broadcast record. In *Royce International Broadcasting*, 4 FCC Rcd 7139 (Rev. Bd.), which dealt with a renewal situation, the Board referred to the *Second Further Notice of Inquiry and Notice of Rule Making*, 3 FCC Rcd 5179, 5195-96 (1988) which discussed treatment of rule violations at renewal, and in which it was stated that " 'perfect compliance' is not required; for rule violations to be considered at renewal, they must be 'serious' and/or 'numerous' ". Darrell Bryan's reasoning for unmodulated operation of the WSMG transmitter has been explained. Under the circumstances here, the transmitter operation does not warrant addition of issue 1, and, does not constitute an acceptable threshold showing of unusually poor broadcast record.

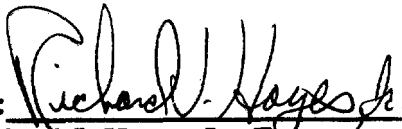
24. One of the rare cases where the Commission did issue a demerit for an unusually poor broadcast record serves as a guideline for the kind of showing that must be made. In *East St. Louis Broadcasting Co.*, 19 FCC 2d 289 (Rev. Bd. 1969), aff'd 29 FCC 2d 170, the applicant's broadcast record was found to be unusually poor in light of the following: double billing, rigged contests, use of facilities to disparage other stations, unauthorized rebroadcasts, poor management of staff, fire insurance fraud, 24 hour repetition of the same song, use of facilities to air controversy with other stations, financial difficulties in the operation of the station, and unscheduled broadcasts concerning station plight and personal family matters. *Id* at 354-355. It is clear that the egregious and ongoing conduct present in *East St. Louis Broadcasting Co.* is absent here.

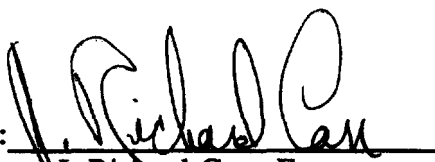
CONCLUSION

In view of the foregoing, it is submitted that there is no basis for addition of any of the issues requested by SBH and its threshold showing of unusually poor broadcast record is completely inadequate. The SBH petition should be denied.

Respectfully submitted,

DARRELL BRYAN

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By: 
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His Attorneys

November 12, 1993

ATTACHMENT A

DECLARATION OF DARRELL BRYAN
PERTAINING TO STATEMENT OF J. KENT BEWLEY

Neither Kathy Knight nor her father, Frank Harkins, have any present interest in my Tusculum FM application. Further, there has been no discussion nor understanding with them that either of them will have any future interest, or any future role as an investor.

Kent Bewley refers to the fact that my Sales Manager, Kathy Knight, visited him at his business to discuss the radio application. The point that Kent Bewley failed to mention is that as Sales Manager of my AM radio station, Kathy called on the dealership on a regular basis. Many times she spoke directly to him about advertising. Kathy really has known Kent Bewley more years than she has known me and considers him to be her friend. I did not ask her to speak to Kent about this project at all. However, when she told me that she had talked to Kent and he seemed to be unaware that he would be competing against me, I was glad she had opened the door for discussion.

I am aware that Kathy's father, Frank Harkins, visited Kent Bewley and talked about the FM. This was not done at my request and was without my knowledge. However, knowing Mr. Harkins as I do, and having been close to the whole family for several years, I can understand his thinking that perhaps he was helping me.

I declare under penalty of perjury that the foregoing statements are true and correct.



Darrell Bryan

11-11-93
Date

ATTACHMENT B

DECLARATION OF FRANK HARKINS, SR.

Sometime in early 1992, my daughter, Kathy Knight, told me that Darrell Bryan, who she works for at WSMG (AM), had applied for an FM radio station. She mentioned that Kent Bewley and Paul Hite were involved with someone else (Bill Seaver, who I don't know) in applying for the station as well. My daughter said that she was excited about the FM because she would be the Sales Manager and it would be so good to have an FM because of the coverage to all of Greene County.

At that point in time, I had never discussed the FM station with Darrell in any way. I had known Kent Bewley since he was a kid (on the golf course) through his adult life, and purchased several autos from his dealership over the years. I stopped in at his business and asked him about his involvement with a radio station. I thought that he might not know that the competing application had been filed by Darrell and that if he knew it was the WSMG people who were trying to get the FM station, he might reconsider his involvement.

In the course of the conversation I did mention to Kent that if I had money, I would love to help Darrell, but living on retirement, I didn't really have money for investing. Mr. Bewley states that when I was asked if I was going to be involved, I told him: "Not in the operation of the station, but kind of like you and Paul". Mr. Bewley states that his "overall impression" was that I already was or was intending to become an investor in the radio station.

On October 4, 1993, I was getting my car serviced at Kent's auto dealership and Kent called me into his office and asked if I had heard anything about the radio station. I told him that I hadn't seen or talked to Darrell or Kathy about it recently. He said he wished he wasn't involved in this at this point. Our conversation was brief -- he was busy and my car was ready.

I do not recall the exact words that I used during my April 1992 conversation with Kent Bewley, but I know that I never stated to Mr. Bewley that I was involved with the radio application, or that I was going to provide financial support for the station just as Mr. Bewley and Mr. Hite were doing for SBH. I am 73 years old and retired, live on Social Security and a small retirement fund. It would be impossible for me to invest in this radio station or any other business.

There has never been any understanding with Darrell Bryan about me being involved in the radio project as an investor, or in any other way. The entire purpose of my visit to Kent Bewley was to express my surprise that he was competing against Darrell's application and to see if there was any chance that he was not aware of the situation.

If Mr. Bewley formed the impression that I am involved as an investor, he is mistaken in that impression.

I declare under penalty of perjury that the foregoing statements are true and correct.

Frank Harkins Sr.
Frank Harkins, Sr.

11-11-93
Date

ATTACHMENT A

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I am aware that Kathy's father, Frank Harkins, visited Kent Bewley and talked about the FM. This was not done at my request and was without my knowledge. However, knowing Mr. Harkins as I do, and having been close to the whole family for several years, I can understand his thinking that perhaps he was helping me.

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Darrell Bryan

11-11-93
Date

ATTACHMENT B

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At that point in time, I had never discussed the FM station with Darrell in any way. I had known Kent Bewley since he was a kid (on the golf course) through his adult life, and purchased several autos from his dealership over the years. I stopped in at his business and asked him about his involvement with a radio station. I thought that he might not know that the competing application had been filed by Darrell and that if he knew it was the WSMG people who were trying to get the FM station, he might reconsider his involvement.

In the course of the conversation I did mention to Kent that if I had money, I would love to help Darrell, but living on retirement, I didn't really have money for investing. Mr. Bewley states that when I was asked if I was going to be involved, I told him: "Not in the operation of the station, but kind of like you and Paul". Mr. Bewley states that his "overall impression" was that I already was or was intending to become an investor in the radio station.

On October 4, 1993, I was getting my car serviced at Kent's auto dealership and Kent called me into his office and asked if I had heard anything about the radio station. I told him that I hadn't seen or talked to Darrell or Kathy about it recently. He said he wished he wasn't involved in this at this point. Our conversation was brief -- he was busy and my car was ready.

I do not recall the exact words that I used during my April 1992 conversation with Kent Bewley, but I know that I never stated to Mr. Bewley that I was involved with the radio application, or that I was going to provide financial support for the station just as Mr. Bewley and Mr. Hite were doing for SBH. I am 73 years old and retired, live on Social Security and a small retirement fund. It would be impossible for me to invest in this radio station or any other business.

There has never been any understanding with Darrell Bryan about me being involved in the radio project as an investor, or in any other way. The entire purpose of my visit to Kent Bewley was to express my surprise that he was competing against Darrell's application and to see if there was any chance that he was not aware of the situation.

If Mr. Bewley formed the impression that I am involved as an investor, he is mistaken in that impression.

I declare under penalty of perjury that the foregoing statements are true and correct.


Frank Harkins, Sr.

11-11-93
Date

ATTACHMENT C

DECLARATION OF KATHY KNIGHT

I highly resent Kent Bewley's statement that I was apparently on a fact-finding mission for Darrell Bryan when I visited him last February. I must admit that if Darrell had asked me to talk to Kent, I would have, but he did not. I did tell Darrell that since I had known Kent for many years, I felt comfortable talking with him about why he was involved in an application that was competing with Darrell's application especially since I didn't know he ever had any interest in radio. The main reason I saw him the day I did is because several days earlier when I visited Mike Ottinger, who I called on at Bewley Oldsmobile for advertising, he indicated that I needed to talk to Kent (Owner of Bewley Olds) because he was taking a bigger part in their advertising budget.

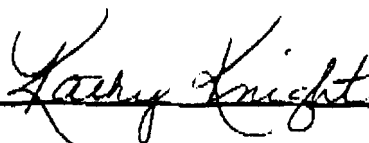
During the conversation with Kent, I asked if he knew that "we" had filed an application for the new FM station. I regularly use the words "we" and "us" when I am talking to prospective advertisers about what WSMG can do for them. To my knowledge, such references have never led anyone to think that I was claiming part ownership of the station. I believe that it has always been interpreted as meaning Darrell and all of his people at WSMG. I explained to him how I was hoping he might reconsider because the process would just be time-consuming and expensive. I even told him that maybe Bill Seaver might not want to continue if he knew that "we" were hard working people who really wanted to get an FM so that "we" could be heard throughout the whole county. I told him that people had complained to me ever since I went to work at the station about not being able to hear "us", particularly at night and they really liked all the things we do and promote in the community.

I did not make any statement to Kent Bewley that would lead anyone to believe that I was a part owner of the FM application or that my father and I were providing funding. The only thing that I can recall is my use of the generic words "we" and "us", but I thought that it was obvious that I was referring to the WSMG "family".

Further, to the best of my knowledge, Darrell not only did not ask my father to talk to Kent, he did not know about it until Dad came by the station after the conversation. I was there when he told Darrell that he didn't really think Kent was that interested in pursuing the station now that he knew Darrell and WSMG were involved.

On the allegations concerning Public Affairs Issues and Problems lists not being in the file at the time of the station visit by Mr. Murray, I had been working in the files for about three weeks because of a new FCC checklist that we had received, and the files were spread out all over my office upstairs. The young lady on duty was not aware of the location of the missing files, but when asked about missing files by Mr. Murray, she said that she did not know anything about them but that she could get in touch with me. Mr. Murray declined that offer. If I had been called the day Mr. Murray was "investigating", I could have enlightened him and provided him with the "missing" lists.

I declare under penalty of perjury that the foregoing statements are true and correct.


Kathy Knight

11-10-93
Date

ATTACHMENT D

**DECLARATION OF DARRELL BRYAN
WITH REGARD TO UNMODULATED OPERATION OF TRANSMITTER**

In December, 1992, I decided to start signing WSMG off the air at midnight. We had been 24 hours a day for about 10 years. Our new sign-on time was 4:30 a.m. Monday thru Saturday and 6:00 a.m. on Sunday. I really should have done it much earlier because of our very limited signal night-time.

Our transmitter is a Collins 820D-2 and is 20 years old. The transmitter started blowing fuses that were knocking the transmitter off the air; and at those times you could see the tubes getting smoky, which means they could go out at any time.

After experiencing some recurring problems, and while it was being determined what transmitter components needed replacing, I made the decision to not turn the transmitter off at sign-off time at midnight. I was afraid we would not be able to get the transmitter back on the air. My intent was to make sure the public was served. There was certainly no economic gain for me to keep the transmitter on extra hours at night. It cost more money for electricity.

I knew that leaving the transmitter on unmodulated would not cause any interference because we are authorized to operate 24 hours per day. The midnight - 6:00 am period is the Experimental Period for testing and maintenance and I felt that leaving the transmitter on during the period from midnight to 4:30 am in order to prevent transmitter breakdowns was preventive maintenance and was permissible. Since the unmodulated operation was limited to the experimental period, I believed that it was not necessary to air station IDs or to have an operator on duty.

New tubes were installed in the transmitter in July, repairs were made and the transmitter problems ceased. From that point in time the transmitter has been turned off at midnight.

I declare under penalty of perjury that the foregoing is true and correct.


Darrell Bryan

11-11-93
Date